

DELAWARE HEALTH FACILITIES AUTHORITY

Minutes of Annual Meeting

of

March 7, 2019

The Annual Meeting of the Delaware Health Facilities Authority (the “Authority”) was held after proper notice at 12:30 p.m., March 7, 2019, in the offices of Potter Anderson & Corroon LLP at 1313 N. Market Street, 6th Floor, Wilmington, Delaware.

Attending in person were Authority members (such individuals, the “Members”):

Rolf F. Eriksen (Chairman)
Desmond A. Baker
W. Jack Riddle
Howard A. Palley, Ph.D.
Lisa More

Also attending in person were:

Rick Geisenberger, Secretary of Finance, State of Delaware
Stephanie Scola, Director of Bond Finance, State of Delaware
Matthew J. O’Toole of Potter Anderson & Corroon LLP, counsel to the Authority
Alyssa L. Gerace of Potter Anderson & Corroon LLP, counsel to the Authority
Huston A. Firment of Potter Anderson & Corroon LLP, counsel to the Authority
Peter Kennedy of Cover & Rossiter, auditor of the Authority

There were no members of the public in attendance.

All documents referred to in these Minutes and not attached hereto are filed in the records of the Authority.

Chairman Rolf F. Eriksen called the meeting to order at 12:35 p.m.

Opening Remarks

The Members welcomed Secretary Geisenberger and Director Scola. Secretary Geisenberger gave some opening remarks. The Members briefly discussed with Secretary Geisenberger the possibility of presenting legislation to amend the Health Facilities Act (the “HF Act”) to fit the Authority’s current needs, which discussion was later resumed.

Minutes from Prior Authority Meetings

The Members next reviewed the Minutes of the meeting of the Authority held on October 23, 2017 (the “Minutes”). Upon motion duly made and seconded, the Members unanimously adopted the following resolutions:

Approval of Minutes of Prior Meeting

RESOLVED, that the Minutes of Annual Meeting (the “Minutes”) of the Delaware Health Facilities Authority (the “Authority”) held on September 28, 2017, as presented to and reviewed by the Authority, be, and hereby are, approved;

RESOLVED, that Desmond A. Baker as Secretary of the Authority be, and hereby is, authorized and empowered to sign the certification appended to the Minutes;

RESOLVED, that the Authority be, and hereby is, authorized to, and shall within five working days, cause the certified Minutes (without exhibits and attachments thereto) to be posted on the Delaware Public Meeting Calendar; and

RESOLVED, that the certified Minutes shall be filed with the record of the proceedings of the Authority.

Election of Officers

The Members then discussed the election of officers of the Authority. Upon motion duly made and seconded, the Members unanimously adopted the following resolution:

Election of Officers

RESOLVED, that each of the following persons be, and hereby is, elected to serve as an officer of the Delaware Health Facilities Authority, each to hold the office and title set forth opposite his or her name below, to hold such office until his or her successor is duly elected and qualified:

<u>Officer</u>	<u>Office</u>
Rolf F. Eriksen	Chairperson
Desmond A. Baker	Vice Chairperson, Treasurer, and Secretary
W. Jack Riddle	Vice President, Assistant Treasurer, and Assistant Secretary
Lisa More	Vice President
Howard A. Palley, Ph.D	Vice President

Vacancies and Expiration of Terms

The Members next discussed the Authority's two vacancies in its membership, and reviewed the remaining Members' terms, which are due to expire on May 22, 2019. Mr. O'Toole reminded the Members of the HF Act's criteria for Authority Members, including geographic, political and occupational requirements. Ms. More presented two potential candidates that fulfilled the HF Act's occupational requirements, but noted that the geographical and political components had not yet been ascertained. The Members discussed with Secretary Geisenberger the process for presenting names to the Governor for appointment in the context of the timeline for passing legislation to modernize the HF Act. Upon further discussion, the Members agreed that the HF Act's geographic criteria were important as a means to accurately monitor and reflect healthcare facility needs throughout the state. The Members further agreed that in light of the Authority's mission and its bond financing application consideration practices and processes, the HF Act's political balance requirement was not necessary. The Members agreed to formulate and propose legislation modifying the HF Act prior to presenting names to the Governor for filling the Authority's membership vacancies.

Revenues and Expenses for 2017 and 2018

Mr. O'Toole presented to the Members summaries of the Authority's revenues and expenses for 2017 and 2018, legal fees and disbursements paid by hospitals in bond transactions (2015-2018), the Authority's recent history of professional fee payments (2015-2018), and the percentage allocations of expenses by hospital. Mr. O'Toole noted that an estimated operating budget for the year ahead would no longer be prepared, as the Authority will now allocate expenses to hospitals based on incurred expenses, rather than projected expenses.

Mr. O'Toole then reported that the Authority's operating expenses for the calendar year 2017 would be allocated among the participating facilities pro rata based on the amount of outstanding bonds issued by the Authority for each participating facility as of December 31, 2017, and likewise that the Authority's operating expenses for the calendar year 2018 would be allocated among the participating facilities pro rata based on the amount of outstanding bonds issued by the Authority for each participating facility as of December 31, 2018.

After discussion, upon motion duly made and seconded, the Members unanimously adopted the following resolutions:

Approval of Revenues and Expenses for 2017 and 2018

RESOLVED, that the summaries of revenues and expenses of the Delaware Health Facilities Authority (the "Authority") for the years 2017 and 2018, as presented to and reviewed by the Authority, be, and hereby are, approved;

RESOLVED, that the report of Potter Anderson & Corroon LLP (2015-2018) legal fees and disbursements paid by hospitals in Authority bond matters, as presented to and reviewed by the Authority, be, and hereby is, approved; and

RESOLVED, that the summary of the Authority's recent history (2015-2018) of fees paid and anticipated fees for professional services, as presented to and reviewed by the Authority, be, and hereby is, approved.

Assessment Allocations for 2017 and 2018

RESOLVED, that participating facilities (as defined in the Delaware Health Facilities Act, 16 Del. C. § 9201, et seq.) with outstanding bonds issued by the Authority shall reimburse the Authority for the operating expenses (including, without limitation, administrative costs and expenses) of the Authority as described below;

RESOLVED, that the operating expenses (including, without limitation, administrative costs and expenses) of the Authority for a calendar year shall be allocated among such participating facilities on a pro rata basis, which pro rata allocation for each such participating facility shall be determined by dividing the amount of outstanding bonds (as of the end of the current applicable calendar year) issued by the Authority for such participating facility by the total amount of outstanding bonds issued by the Authority for all such participating facilities;

RESOLVED, that the operating expenses (including, without limitation, administrative costs and expenses) of the Authority for the calendar year 2017 shall be allocated among such participating facilities on a pro rata basis, which pro rata allocation for each such participating facility shall be determined by dividing the amount of outstanding bonds (as of December 31, 2017) issued by the Authority for such participating facility by the total amount of outstanding bonds issued by the Authority for all such participating facilities; and

RESOLVED, that the operating expenses (including, without limitation, administrative costs and expenses) of the Authority for the calendar year 2018 shall be allocated among such participating facilities on a pro rata basis, which pro rata allocation for each such participating facility shall be determined by dividing the amount of outstanding bonds (as of December 31, 2018) issued by the Authority for such participating facility by the total amount of outstanding bonds issued by the Authority for all such participating facilities.

Audits

Mr. Kennedy discussed the Authority's audits and explained Cover & Rossiter's methodology in preparing audits for the Authority.

The Members reviewed the final audited financial statements of the Authority prepared by Cover & Rossiter for the calendar year 2014.

The Members next reviewed drafts of audited financial statements of the Authority prepared by Cover & Rossiter for the calendar year 2017, and a draft management letter and representation letter prepared by Cover & Rossiter in connection with the audited financial statements.

The Members discussed the accounting standards updates outlined in Cover & Rossiter's draft management letter. Mr. Kennedy noted that the management letter reflects the Authority's "hybrid" status as an instrumentality of the state as well as a non-profit entity. Mr. Kennedy noted Cover & Rossiter's recommendation for additional liquidity disclosures by the Authority in light of the accounting standards updates, which will be reflected in the Authority's 2018 financial statements. Mr. Kennedy confirmed that Cover & Rossiter will ensure that the Authority's financial reporting adheres to current accounting standards.

The Members next reviewed a draft of the Authority's Annual Report to the Governor for the calendar years 2017 and 2018.

Upon motion duly made and seconded, the Members unanimously adopted the following resolutions:

Audit (2014-2013)

RESOLVED, that the audited financial statements of the Delaware Health Facilities Authority (the "Authority") prepared by Cover & Rossiter, P.A. for the years ended December 31, 2013 and December 31, 2014, as presented to and reviewed by the Authority, be, and hereby are, approved.

Audit (2017-2016)

RESOLVED, that the drafts of the audited financial statements of the Authority prepared by Cover & Rossiter, P.A. for the years ended December 31, 2016 and December 31, 2017, as presented to and reviewed by the Authority, be, and hereby are, approved;

Representation Letter (2018)

RESOLVED, that the representation letter from the Authority to Cover & Rossiter, P.A., dated November 14, 2018, be, and hereby is, approved; and

RESOLVED, that Rolf F. Eriksen as Chairman of the Authority be, and hereby is, authorized and empowered to approve, sign and deliver on behalf of the Authority the representation letter.

Annual Report to Governor for 2017 and 2018

RESOLVED, that the draft of the Authority's Annual Report to the Governor for the calendar years 2017 and 2018, as presented to and reviewed by the Authority, be, and hereby is, approved; and

RESOLVED, that Potter Anderson & Corroon LLP be, and hereby is, authorized and empowered to sign and deliver the Authority's Annual Report to the Governor.

Other Business

Engagement Letter and Service Provider Appointments

Mr. O'Toole presented Potter Anderson's engagement letter to the Authority. He outlined the terms of the engagement and the services provided by Potter Anderson to the Authority, including performance of administrative duties and record keeping. He further noted that Potter Anderson is providing a ten percent discount on its legal fees in recognition of the Authority's status.

Upon motion duly made and seconded, the Members unanimously adopted the following resolutions:

Appointments

RESOLVED, that Potter Anderson & Corroon LLP be and hereby is appointed as, has been, and continues to be, general counsel to the Delaware Health Facilities Authority (the "Authority");

RESOLVED, that in addition to its serving as general counsel to the Authority, Potter Anderson & Corroon LLP be and hereby is, has been, and continues to be, authorized and empowered to keep a record of the proceedings of the Authority and to be custodian of all books, documents and papers of or filed with the Authority, the minute book or journal of the Authority, and its official seal;

RESOLVED, that the engagement letter from Potter Anderson & Corroon LLP to the Authority, dated March 7, 2019, be, and hereby is, approved;

RESOLVED, that Rolf F. Eriksen as Chairman of the Authority be, and hereby is, authorized and empowered to approve, sign and deliver on behalf of the Authority the engagement letter; and

RESOLVED, that Cover & Rossiter, P.A. be and hereby is appointed as, has been, and continues to be, auditor of the Authority, and

is authorized and empowered to prepare any and all financial statements and audits (including, without limitation, an annual audit) with respect to the Authority.

Liability Insurance

The Members next reviewed the Authority's existing liability insurance policy and discussed whether the Authority should also obtain a directors and officers policy. The Members determined to retain the Authority's existing liability insurance and further look into obtaining a directors and officers policy.

Upon motion duly made and seconded, the Members unanimously adopted the following resolution:

Liability Insurance

RESOLVED, that the Delaware Health Facilities Authority (the "Authority") be and hereby is authorized and empowered to pay the premium associated with liability insurance coverage provided to the Authority by Hartford Casualty Insurance Company

Amendments to the Health Facilities Act and the Authority's By-Laws

The Members resumed their discussion of possible amendments to the HF Act and the Authority's By-Laws. The discussion included the possibility of amendments removing the HF Act's political balance requirements, changing the Authority's fiscal year-end from December to June to align with the hospital borrowers' year-ends to better facilitate the audit process, adding indemnification and advancement language for the benefit of the Members, and permitting Member attendance at a meeting and voting by teleconference. Secretary Geisenberger offered to request the attorney general's office to send the Authority information about meeting attendance requirements for quorum and voting purposes.

The Members also discussed updates to the Authority's By-Laws, including removing a requirement to send paper copies of meeting notices to Members by mail.

State Treasurer Reports

Mr. O'Toole reported on the Authority's biannual reports to the State Treasurer regarding the Authority's outstanding bonded indebtedness. The Members reviewed the December 2017, June 2018 and December 2018 reports.

Potential New Bond Financing Applications and Revisions to Bond Financing Application

Mr. O'Toole stated that the Authority's bond counsel notified him that two hospitals currently were applying for certificates of public review, and of the possibility that one or both hospitals would come to the Authority for bond financing in the spring. Mr. Eriksen reiterated the Authority's position that the Authority would not consider applications that were not complete at the time of submission, including the securing of any required certificates of public review from the Delaware Health Review Board ("DHRB"). The Authority Members also discussed the process for engaging bond counsel, and agreed that bond counsel should be engaged early in the bond financing application process and that the engagement process should be driven by the Authority.

The Members next discussed the form of bond financing application, which has been revised in the past two years and is undergoing further revision. Mr. O'Toole outlined certain proposed changes to the application and Mr. Eriksen reiterated his request to modify the bond financing application to require borrowers to include past IRS Form 990s and to require borrowers to disclose historical information about any loan covenant defaults, including technical defaults.

Joint Meeting with DHRB

The Members discussed whether it would be advisable to hold a joint meeting with the DHRB to discuss methods to ensure that Delaware's health care needs are being appropriately met. Mr. Eriksen noted the Authority's historical reliance on the DHRB to certify need for projects in light of the Authority's mission to provide financing assistance for healthcare facilities for the public benefit. Dr. Palley noted his concern as to whether there is a prior overall plan in place at the DHRB that is applied in determining the need, on a state and regional level, for new healthcare facilities or expanded capacity of existing facilities. The Members reviewed the DHRB's 2019 meeting calendar and the Members discussed methods for facilitating a joint discussion.

Post-Issuance Tax Compliance

Mr. Eriksen requested a discussion and review of the Authority's post-issuance tax compliance policy. Mr. Kennedy explained the purpose of the policy, which requires a questionnaire to be sent to bond borrowers each year, and confirmed that Cover & Rossiter sends the questionnaire to borrowers each year and monitors the responses. The questionnaire prompts borrowers to disclose certain tax and compliance information. Dr. Palley proposed revising the questionnaire to require borrowers to disclose if there have been any changes in the nature of any contractual arrangements with health care services providers that were in place at the time of the bond issuance.

Adjournment

There being no further business, Mr. Eriksen adjourned the meeting at 3:20 p.m.

CERTIFICATION

I, Desmond A. Baker, hereby certify that the foregoing is a true and correct copy of the Minutes of Annual Meeting of the Delaware Health Facilities Authority held on March 7, 2019.

Date:

Desmond A. Baker
Secretary